

## § 682.212

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### § 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

- (1) Secure funds for making loans; or
- (2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

- (1) Cash payments by or on behalf of a school made to a lender or other party.
- (2) The maintaining of a compensating balance by or on behalf of a school with a lender.
- (3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.
- (4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.
- (5) Purchase by or on behalf of a school of stock of the lender.
- (6) Payments ostensibly made for other purposes.

(c) Except when purchased by an agency of any State functioning as a secondary market or in any other circumstances approved by the Secretary, notes, or any interest in notes, may not be sold or otherwise transferred at discount if the underlying loans were made—

- (1) By a school; or
- (2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the FFEL programs as collateral for any loan bearing aggregate interest and

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other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the most recently prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the loan seller a warranty that—

(1) Covers future reductions by the Secretary or a guaranty agency in computing the amount of loss payable on default claims filed on the loans, if the reductions are attributable to an act, or failure to act, on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a FFEL loan shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than one year, or both.

(h)(1) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents, provided such list—

(i) Is not used to deny or otherwise impede a borrower's choice of lender;

(ii) Does not contain fewer than three lenders that are not affiliated with each other and that will make loans to borrowers or students attending the school; and

(iii) Does not include lenders that have offered, or have offered in response to a solicitation by the school, financial or other benefits to the school in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

(2) A school that provides or makes available a list of recommended or suggested lenders must—

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(i) Disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends or suggests;

(ii) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders;

(iii) Include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders;

(iv) For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender;

(v) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school; and

(vi) Update any list of recommended or suggested lenders and any information accompanying such a list no less often than annually.

(3) For the purposes of paragraph (h) of this section, a lender is affiliated with another lender if—

(i) The lenders are under the ownership or control of the same entity or individuals;

(ii) The lenders are wholly or partly owned subsidiaries of the same parent company; or

(iii) The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

(Approved by the Office of Management and Budget under control number 1845-0020)

[57 FR 60323, Dec. 18, 1992, as amended at 72 FR 62002, Nov. 1, 2007]

### § 682.213 Prohibition against the use of the Rule of 78s.

For purposes of the calculations required by this part, a lender may not use the Rule of 78s to calculate the outstanding principal balance of a loan, except for a loan made to a borrower who entered repayment before June 26, 1987 and who was informed in the promissory note that interest on the loan

would be calculated using the Rule of 78s. For those loans, the Rule of 78s must be used for the life of the loan.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 68 FR 75429, Dec. 31, 2003]

### § 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan on which interest benefits are to be paid, a lender shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202). With regard to Regulation B, the Secretary considers the Stafford loan program to be a credit-assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, under 12 CFR 202.8(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and spouse's financial resources.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1071-1087-2)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9119, Feb. 19, 1993; 64 FR 58965, Nov. 1, 1999]

### § 682.215 Income-based repayment plan.

(a) *Definitions.* As used in this section—

(1) *Adjusted gross income* (AGI) means the borrower's adjusted gross income as reported to the Internal Revenue Service. For a married borrower filing jointly, AGI includes both the borrower's and spouse's income. For a married borrower filing separately, AGI includes only the borrower's income.

(2) *Eligible loan* means any outstanding loan made to a borrower under the FFEL and Direct Loan programs except for a defaulted loan, a FFEL or Direct PLUS Loan made to a parent borrower, or a FFEL or Direct Consolidation Loan that repaid a FFEL or Direct PLUS Loan made to a parent borrower.